

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UMG RECORDINGS, INC., a Delaware corporation; BMG MUSIC, a New York general partnership; VIRGIN RECORDS AMERICA, INC., a California corporation; and SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership,

Plaintiffs,

vs.

No. CIV 08-0489 JB/RLP

SHAWN MONTOYA,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiffs' Motion for Additional Extension of Time to Effectuate Service, filed December 18, 2008 (Doc. 7). The Court held a hearing on January 29, 2009. The primary issue is whether the Court should grant the Plaintiffs another extension to serve Defendant Shawn Montoya with the Summons and Complaint. Because there is some evidence that Montoya has been avoiding service, and because the Plaintiffs may have to use alternative service to serve Montoya, the Court will grant the motion.

PROCEDURAL BACKGROUND

The Plaintiffs filed their Complaint on May 20, 2008. At the time of the filing, the Plaintiffs engaged a process server to serve Montoya. The Plaintiffs' process server has been unable to serve Montoya despite repeated efforts, including telephone contact with Montoya.

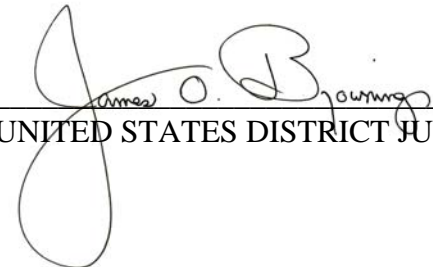
On December 16, 2008, the Plaintiffs' Motion for Substituted Service of Process was filed with the Court. See Plaintiffs' Motion for Substituted Service of Process, filed December 16, 2008

(Doc. 6). The last deadline to serve Montoya passed on December 18, 2008. The Plaintiffs ask the Court, pursuant to rule 4(m) of the Federal Rules of Civil Procedure, for an additional thirty days to serve Montoya with the Summons and Complaint.

ANALYSIS

While the Court believes that the Plaintiffs, given their difficulties with serving Montoya, could have served Montoya with substituted service of process, there is evidence that Montoya is evading service. Additionally, while the Court believes that the Plaintiffs' Motion for Substituted Service of Process is unnecessary and that the Plaintiffs could have served Montoya already by using their proposed method of substituted service, that motion indicates that the Plaintiffs are being diligent in their efforts to effectuate service. Accordingly, the Court will permit the Plaintiffs an additional thirty days, beginning January 29, 2009, to serve the Complaint and Summons on Montoya.

IT IS ORDERED that the Plaintiffs' Motion for Additional Extension of Time to Effectuate Service is granted.


UNITED STATES DISTRICT JUDGE

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